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Our File No.  
21681-102

October 1, 2010

**By ECF**

Hon. Joseph F. Bianco  
United States District Judge  
Eastern District of New York  
100 Federal Plaza  
Central Islip, New York 11722

**Re: Gurney's Inn Resort & Spa Ltd. v. Linda Benjamin, et al.,  
No. 10-CV-3993 (JFB) (ARL)**

Dear Judge Bianco:

We represent plaintiff Gurney's Inn Resort & Spa Ltd. ("Gurney's") in the above matter. This letter is in response to the Court's order dated September 29, 2010. In the order, the Court directed Gurney's to submit a letter by October 5, explaining why its letter to the Court dated September 28 should be filed under seal.

Gurney's letter to the Court dated September 28 should be filed under seal for the following reasons. In the related action pending in the Southern District of New York, the parties entered into, and the Court so-ordered, a Confidentiality Stipulation and Order (the "Confidentiality Order"). A copy of the Confidentiality Order is annexed hereto as Exhibit "1."

Pursuant to Section 7 of the Confidentiality Order, Gurney's may designate any documents to be filed with the Court as "Confidential," and in such case, such documents must be filed under seal. Pursuant to the Confidentiality Order, "Confidential Information" is defined as "any document or thing that the Disclosing Party believes in good faith constitutes or embodies matter used by it in or pertaining to its business, which matter is not generally known and which the Disclosing Party would not normally reveal to third parties or would cause third parties to maintain in confidence." Ex. 1, § 1.

Obviously, the Confidentiality Order does not apply to this litigation. However, Gurney's has every intention of entering into the same or similar agreement in this case. The only reason Gurney's has not yet done so is because of the various procedural applications that have occupied this case.

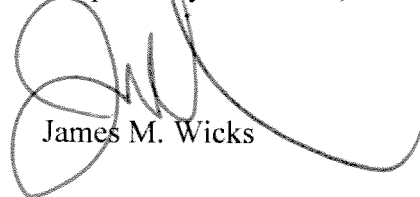
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Gurney's letter to the Court dated September 28 unquestionably contains "Confidential Information." The letter sets forth specific details concerning Gurney's current financial status that Gurney's would not ordinarily reveal to third parties or would expect third parties to maintain in confidence. Public disclosure of such information would be harmful to Gurney's. In addition, while counsel for defendant Linda Benjamin ("Benjamin") chose to file Exhibits A through C to Gurney's September 28 letter publicly via ECF in the Southern District of New York action, Gurney's has demanded that Benjamin's counsel remove them from the docket and file them under seal. A copy of Gurney's letter to Benjamin's counsel dated September 28, 2010 is annexed hereto as Exhibit "2." The fact that Benjamin's counsel chose to publicly file documents that are seriously harmful to Gurney's does not mean that the harm should be compounded by further public filing in this case.

Based on the foregoing, Gurney's respectfully requests that its letter to the Court dated September 28, 2010, including the exhibits thereto, be filed under seal.

We thank the Court for its time and attention to this matter.

Respectfully submitted,



James M. Wicks

JMW/fcm

cc: All Counsel of Record (via ECF)